

Department of Labor – Fiduciary Advice Definition and Conflict of Interest Rule

May 11, 2015 | Client Update

On April 14, 2015, the U.S. Department of Labor (“DOL”) released its long-awaited re-proposed regulation redefining who is a “fiduciary” under Section 3(21) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), by reason of providing “investment advice” to ERISA plans and IRAs (“Reproposal”). The Reproposal expands the types of individuals and entities that would be viewed as “investment advice” fiduciaries, and provides carve-outs for certain activities that could give rise to fiduciary status. In addition, the Reproposal includes amendments to six existing DOL “prohibited transaction” class exemptions (“PTEs”) and introduces two new exemptions, including a “Best Interest Contract Exemption,” which allows some retirement account advisers to continue to receive payments that create a conflict of interest if the adviser contractually commits to impartiality and meets other contractual, recordkeeping and reporting requirements. If enacted, the Reproposal will have a significant impact on the delivery of services to ERISA plans and IRAs and related compensation practices for the financial services industry.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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